

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

FILED

2019 OCT -1 P 3:59

CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

UNITED STATES OF AMERICA,

v.

GEORGE AREF NADER,

Defendant.

Case No. 1:19-CR-201

FILED UNDER SEAL

CONFIDENTIAL MEMORANDUM IN SUPPORT OF
MOTION FOR LEAVE TO FILE UNDER SEAL

George A. Nader ("Defendant"), by and through the undersigned counsel, pursuant to Local Criminal Rules 49(A), (D), and (E), as well as the Protective Order at ECF No. 67 entered on July 19, 2019, respectfully requests an Order sealing his Motion to Dismiss Count Three of the Indictment, and accompanying exhibits.

I. Items to be Sealed and Necessity for Sealing

1. Defendant seeks to file a Motion to Dismiss Count Three of the Indictment and accompanying exhibits. Defendant seeks to file and maintain these documents under seal because they contain materials covered by the Protective Order entered by the Court on July 19, 2019, *see* ECF No. 67, and contain information about unindicted individuals and victim identifying information.

II. References to Governing Case Law

2. The Motion to Dismiss Count Three of the Indictment contains victim identifying information, and discusses confidential discovery materials provided by the Government. In

addition, the Motion includes as exhibits copies of certain discovery materials that contain victim identifying information and reference unindicted individuals. The Protective Order entered at ECF No. 67 requires sealing of documents containing victim identifying information, ECF No. 67 ¶ 4, and more generally prohibits defense counsel from disclosing to third parties documents obtained from the Government in discovery, except as necessary for investigation of the allegations against Mr. Nader and preparation of his defense, *id.* ¶ 5. Publicly filing the Motion and exhibits would result in widespread dissemination of the information contained in these documents, including information about unindicted individuals that may compromise an ongoing governmental investigation. Sealing is appropriate where, as here, there is a substantial probability that the release of the sealed documents would compromise an ongoing governmental investigation. *See, e.g., Matter of Eye Care Physicians of America*, 100 F.3d 514, 518 (7th Cir. 1996); *In re Search Warrant for Secretarial Area Outside Office of Gunn*, 855 F.2d 569, 574 (8th Cir. 1988); *Matter of Flower Aviation of Kansas, Inc.*, 789 F. Supp. 366 (D. Kan. 1992); *see also Baltimore Sun Co. v. Goetz*, 886 F.2d 60, 64-66 (4th Cir. 1989) (noting government interests in maintaining warrant materials under seal, even after execution of the warrant).

3. This Court has the inherent power to seal materials submitted to it when the public's right of access is outweighed by competing interests. *See In re Knight Pub. Co.*, 743 F.2d 231, 235 (4th Cir. 1984). Given that the Motion to Dismiss and accompanying exhibits contain information covered by the Protective Order, which requires sealing of certain documents, and which otherwise generally prohibits widespread dissemination of documents obtained in discovery, sealing is appropriate. Sealing is likewise appropriate to avoid jeopardizing ongoing investigations.

III. Period of Time Defendant Seeks to Have the Matter Remain Under Seal

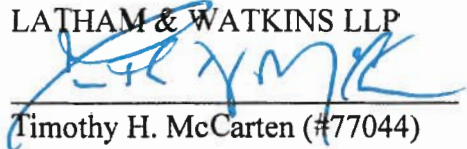
4. Defendant seeks to have these materials sealed until further order of the Court.

For the foregoing reasons, the Court should grant the defendant leave to file under seal the attached motion and accompanying exhibits.

Dated: October 7, 2019

Respectfully submitted,

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